

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 96008

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-018-96

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
Filing Data

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Governor's Signature

State Environmental Commission

Classification [] Proposed [] Adopted By Agency [xx] Temporary [] Emergency []

Brief description of action: LCB File R-018-96 (Petition 96008) permanently amends NAC 445B.400 to NAC 445B.775 by establishing a program for the regulation of air quality emissions from heavy-duty vehicles as required by Nevada Revised Statute 445B.780. The amendments establish an opacity limit for heavy duty vehicle diesel exhaust and revises test procedures and equipment for measuring opacity. NAC 445B.737, 445B.739, 445B.470, 445B.762, 445B.765, 445B.767, 445B.769, 445B.771, 445B.773, and 445B.774 are amended and a new section is added to address the effective date. NAC 445B.766 and 445B.775 are repealed.

Authority citation other than 233B: NRS 455B.210 and NRS 445B.780

Notice date: February 23, February 28 and March 5, 1996

Hearing date: March 26, 1996

Date of Adoption of Agency: March 26, 1996

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 96008
LCB FILE R-018-96**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 445B.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 96008 (R-018-96) was noticed three (3) times: February 23, February 28 and March 5, 1996 in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. Comments were also solicited by the Bureau of Air Quality. See item #3 for clarification of outreach. No written comments were received from the general public. Members of the public testified at the public hearing held on March 26, 1996. The public expressed concern over the lack of a program to certify mechanics in regards to heavy duty diesel engines. Comments also focused on the impact to persons who have older vehicles and where the usage is only periodic. Owners, such a ranchers, farmers and small contractors could be negatively affected. Concern was expressed whether the Nevada program was comparable to the California and Utah diesel emission programs.

A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 extension 3117, or writing to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

2. The number persons who:

- | | | |
|------------|--|-----------|
| (a) | Attended each hearing; | 40 |
| (b) | Testified at each hearing: | 16 |
| (c) | Submitted to the agency written comments: | 3 |

Note: One written comment was received and testimony was received from 8 persons at the Commissions March 26, 1996 hearing on the heavy duty diesel emission control program.

3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. In addition the Bureau of Air Quality, of the Division of Environmental Protection conducted four workshops throughout the state regarding the heavy duty diesel emission program. In addition the Bureau advertised the workshops in Nevada's urban and rural newspapers and by sending notification to interested persons on the Bureau's mailing list. One written comment was received from the Engine Manufacturers Assn. Comments focused on support of the J1667 testing procedure and for the need to establish a standard cutpoint for all diesel vehicles of not less than 70 percent opacity. The Assn also suggested that emission checks should focus on vehicles operating within urban areas. Additional suggestions included the need to adopt repair procedures.

Other comments focused on the poor quality of diesel fuel being delivered by oil companies, and how this fuel affects emissions. The Nevada Motor Transport Assn and the California Trucking Assn commented that the J1667 test method was well worked out and is being adopted across the country. Concern was expressed about the impact to fleet owners and whether it was efficient to conduct tests at fleet facility sites. Other concerns addressed the testing protocol and whether checks should be done to determine whether a vehicles emission control systems had been modified or tampered with.

A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted at the State Environmental Commission hearing on March 26, 1996 with amendments recommended at the public hearing.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
 - (b) Both immediate and long-term effects.
- a. There is a possible adverse economic effect to businesses who fail to properly maintain their heavy-duty motor vehicles or who tamper with emission control devices on their vehicles. The expected 11 percent failure of vehicles has a broad range of compliance costs, ranging at the lower end of \$50 up to \$1,000. It is expected that 165 vehicles will be affected, with an average repair cost of \$450. The expected cost to business would be approximately \$74,250 annually. A positive economic benefit should be realized by some businesses due to increased efficiency of their heavy-duty motor vehicles as a result of improved maintenance. The public should not experience any anticipated long or short term adverse economic impact.
 - b. The long term economic effect will be similar to the short term economic effect. The public will not see an adverse effect or economic benefit either short or long term.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There will be an additional cost for enforcement of the proposed regulation by the Department of Motor Vehicles and Public Safety. The current estimated annual cost is \$159,124 for implementation of the regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations which the proposed amendments duplicate.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The heavy duty vehicle emission program is a state initiated program with no comparable federal program.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide or involve a new fee, and hence since no fee is involved there is not a total amount expected to be collected or used.

ADOPTED PERMANENT REGULATION OF THE NEVADA STATE ENVIRONMENTAL COMMISSION

LCB File No. R018-96

EXPLANATION - Matter in *italics* is new. Matter in [] is material to be omitted.

AUTHORITY: NRS 445B.210 and NRSB 445B.780

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *"Commission" means the state environmental commission.*

Sec. 3. *No owner or driver of a heavy-duty motor vehicle may cause or permit the discharge into the atmosphere of engine exhaust from the vehicle which is of an opacity equal to or greater than 70 percent.*

Sec. 4. *A citation issued by the department on or before January 1, 1997, for a violation of the provisions of NAC 445B.737 to 445B.774, inclusive, must not be accompanied by an administrative fine.*

Sec. 5. NAC 445B.737 is hereby amended to read as follows:

445B.737 As used in NAC 445B.737 to [445B.775,] 445B.774, inclusive, *and sections 2, 3 and 4 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 445B.739 to 445B.762, inclusive, *and section 2 of this regulation*, have the meaning ascribed to them in those sections.

Sec. 6. NAC 445B.739 is hereby amended to read as follows:

445B.739 "Certification level" means the maximum allowable level of opacity [, **determined pursuant to 40 C.F.R. Part 86, Subpart A,**] for a diesel engine with a [1974] 1977 or newer model year[.] *as set by the commission in section 3 of this regulation.*

Sec. 7. Nac 445B.740 is hereby amended to read as follows:

445B. 740 "Citation" means a written communication issued by the department to the owner

or **[operator] driver** of a heavy-duty motor vehicle that is in violation of the provisions of NAC 445B.737 to **[445B.775,] 445B.774**, inclusive, **and sections 2, 3 and 4 of this regulation**, which requires the owner to repair the vehicle and to pay a fine.

Sec. 8. NAC 445B.762 is hereby amended to read as follows:

445B.762 "Test procedure" means the processes of the preconditioning sequence and the measurement of the opacity of smoke to determine whether a vehicle meets the **[standards] standard** of opacity **[that will be set by the commission following the completion of the test program established pursuant to NAC 445B.755.] set forth in section 3 of this regulation.**

Sec. 9. NAC 445B.765 is hereby amended to read as follows:

445B.765 The provisions of NAC 445B.737 to **[445B.775,] 445B.774**, inclusive, **and sections 2, 3 and 4 of this regulation**, apply to all heavy duty motor vehicles operating in this state.

Sec. 10. NAC 445B.767 is hereby amended to read as follows:

445B.767 1. Equipment for the measurement of smoke opacity must **[include a light extinction-type smokemeter that has an optical detection unit, a control indicator unit and a strip chart recorder that meet the following requirements:**

(a) The smokemeter must:

(1) Meet] meet the specifications set forth in section **[7.4] 4** of the Society of Automotive Engineers Procedure, SAE **[J1243, Diesel Emission Production Audit Test Procedure.**

(2) Be calibrated according to specifications in section 8.2 of SAE Procedure J1243.

(b) The strip chart recorder must meet the specifications set forth in subsections 1 to 4, inclusive, of section 7.5 of SAE Procedure J1243.] J1667, Snap-Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles.

2. The test procedure must **[include a preparation phase and preconditioning phase as follows:**

(a) In the preparation phase, the vehicle must be placed at rest, the transmission must be placed in neutral, and the wheels of the vehicle must be properly restrained to prevent any rolling motion.

(b) In the preconditioning phase, the vehicle must be put through a snap-idle cycle at least twice or until two successively measured smoke levels are within 10 percentage points of opacity to each other. The smokemeter must be checked before each preconditioning sequence

to ensure that its zero and span settings are adjusted as specified in section 8.1 of SAE Procedure J1243.

(c) In the test procedure phase, the vehicle must be put through the snap-idle cycle three times.

(d) The opacity must be measured during the preconditioning and test phases with a smokemeter and must be recorded continuously on the chart recorder during each snap-idle cycle. The maximum instantaneous value recorded by the chart recorder is the opacity reading.

3. To determine compliance with paragraphs (a) to (d), inclusive, of subsection 2, the test opacity is the average of the two meter readings with the least difference in opacity. If all three readings have equal differences between them, the test opacity is the average of the three meter readings.

4.] *comply with the provisions of section 3 of SAE J1667, including the preparation phase and preconditioning phase set forth in subsections 1,2 and 3 of section 3 of SAE J1667.*

3. As used in this section, "test opacity" means the smokemeter measurement of opacity to determine compliance with the [standards] *standard* of opacity [that will be set by the commission following the completion of the test program established pursuant to NAC 445B.775.] *set forth in section 3 of this regulation.*

Sec. 11. NAC 445B.769 is hereby amended to read as follows:

445B.769 1. The driver of any heavy-duty motor vehicle powered by a diesel engine that is selected to undergo an inspection procedure shall, upon the request of an officer or inspector:

- (a) Drive the vehicle to the inspection site.
- (b) Perform the functions required for a test procedure.
- (c) Open the door of the vehicle to enable the inspector to observe the depression of the accelerator pedal.
- (d) Permit the inspection of the vehicle's emission control system.
- (e) If a citation is issued, sign the citation to acknowledge its receipt and sign the smoke test strip chart to acknowledge the performance of the test procedure.

2. The driver of a heavy-duty motor vehicle powered by a gasoline engine that is selected to undergo an inspection procedure shall, upon the request of an office or inspector:

- (a) Drive the vehicle to the inspection site.
- (b) Permit an inspection of the emission control system.
- (c) If a citation is issued, sign the citation to acknowledge its receipt.

3. The inspector performing an inspection procedure shall:

(a) Advise the driver that his refusal to submit to the inspection procedure will result in the issuance of a citation.

(b) [Obtain information from the identification plate of the engine of each vehicle tested to determine which standard of opacity applies.

(c)] Issue a citation to the driver of any vehicle that fails either part of the inspection procedure or to any driver who refuses to submit to the inspection procedure.

[(d) Issue a warning to the owner of any heavy-duty motor vehicle powered by a diesel engine that is missing its emission control label which indicates that the serial number of the engine must be provided to the director within 30 calendar days or it will be conclusively presumed that the vehicle has a certification level of 35 percent or less peak smoke opacity.]

4. As used in this section, "inspection site" means an area, including a random roadside location, a weigh station or a fleet facility used to conduct a test procedure on a heavy-duty motor vehicle, or an inspection of an emission control system of a heavy-duty motor vehicle, or both.

Sec. 12. NAC 445B.771 is hereby amended to read as follows:

445B.771 1. An owner of a vehicle who has been issued a citation may demonstrate correction of the vehicle by:

(a) Submitting to the director a receipt evidencing repair from a repair facility or a completed work order from a fleet repair facility or a fleet maintenance facility. The receipt or work order must include:

- (1) The name, address and telephone number of the facility;
 - (2) The name of the mechanic;
 - (3) The date of the repair;
 - (4) A description of any repair or adjustment made to the vehicle; and
 - (5) An itemized list of all replaced components, including a description of the part, number of the part, and the cost of the part.
- (b) Submitting the vehicle to a post-repair test or a post-repair inspection.

2. The director shall require a post-repair test or a post-repair inspection if:

(a) A submitted receipt evidencing repair or a submitted work order does not meet the requirements of paragraph (a) of subsection 1;

(b) A receipt or work order appears to be falsified; or

(c) A second or subsequent failure of either part of an inspection procedure on the vehicle occurs within 1 year after the most recent citation was issued.

3. As used in this section, "post-repair inspection" means a subsequent inspection of an emission control system for the purpose of determining compliance of a vehicle that has been cited for violating the **[standards] standard** of opacity **[that will be set by the commission following the completion of the test program established pursuant to NAC 445B.775.] set forth in section 3 of this regulation.**

Sec. 13. NAC 445B.773 is hereby amended to read as follows:

445B.773 Any person cited for violating the provisions of NAC 445B.737 to **[445B.775,] 445B.774**, inclusive, **and sections 2, 3 of this regulation**, may request an administrative hearing pursuant to the provisions of NRS 233B.121. The request must be made in writing and submitted to the department within 10 days after the date of receipt of the citation. The failure of the owner of the vehicle to request such a hearing within this time operates as a waiver of his right to request such a hearing.

Sec. 14. NAC 445B.774 is hereby amended to read as follows:

445B.774 1. The director may grant a waiver from the **[standards for emissions] standard of opacity** set forth in **[the standards of opacity that will be set by the commission following the completion of the test program established pursuant to NAC 445B.775.] section 3 of this regulation.**

2. Except as otherwise provided in this subsection, an application for a waiver must include a receipt or receipts or other evidence that at least \$1,000 has been spent on parts other than a catalytic converter, fuel inlet restricter, air injection system, exhaust gas recirculation valve, fuel cap or particulate matter trap system, or on labor other than emission testing if the repairs evidenced by the receipt were directly related to the deficiency in emissions.

3. If the vehicle is repaired by the owner, the application must include a receipt or receipts or other evidence that at least \$750 has been spent on parts other than a catalytic converter, fuel inlet

restrictor, air injection system, exhaust gas recirculation valve, fuel cap, or particulate matter trap system and that the parts were purchased within 15 days after the initial test or inspection. No allowance will be made toward the \$750 requirement for labor on a vehicle repaired by its owner.

4. The director shall deny an application for a waiver if the parts have not been installed or the repairs have not been performed as indicated on the receipt or receipts presented to the director.

5. A vehicle that qualifies for repairs under a warranty is not eligible for a waiver.

Sec. 15. NAC 445B.766 and 445B.775 are hereby repealed.

Sec. 16. This regulation becomes effective on July 1, 1996.

END OF PETITION 96008 (LCB R018-96)

TEXT OF REPEALED SECTIONS

445B.766 Adoption by reference of provisions of Code of Federal Regulations.

The commission hereby adopts by reference 40 C.F.R. Part 86, Subpart A, as it exists on October 22, 1992, for the purpose of determining certification levels and the requirements for emission control labels. A copy of the publication which contains this subpart may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402-9328, for the price of \$29.

445B.775 Test program to determine correlation between federal and state levels of certification.

1. The department of conservation and natural resources shall, in cooperation with the department of motor vehicles and public safety, conduct a test program to determine a correlation between the levels of certification set forth in 40 C.F.R. Part 86 and the levels of certification set forth in NAC 445B.737 to 445B.775, inclusive.

2. The department of conservation and natural resources shall conduct the program for a period of 1 year and at the end of this period submit a report to the commission with a recommendation of whether to continue the test program or institute the requirement set forth in NAC 445B.737 to 445B.775, inclusive.

3. The program must use the procedures for testing set forth in NAC 445B.737 to 445B.775, inclusive.

End of Repealed Sections